

Serial No. 10/522,447
Filed: January 19, 2005
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Examiner: Scott H. Stephens
Group Art Unit: 2872

Amendments to the Drawings:

The attached sheets of drawings include changes to Figures 1 and 13. These sheets, which include Figures 1 and 13, replace the original sheets including Figures 1 and 13. In Figures 1 and 13, previously omitted element 11 has been added.

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

REMARKS/ARGUMENTS

Claims 1-36 were in the application as filed, and stand rejected. In this paper, claim one has been canceled without prejudice, claims 2, 4, 10, and 24 have been amended, and claim 37 has been added.

Applicants believe the amendments made herein add no new matter. Any amendment to the claims which has been made in this Amendment and Response, and which has not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto. Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

Objection to Claims

Claims 1 stands objected to as allegedly failing to provide support for the limitation "at least one of the mountings" in line 10. The objection is traversed.

Claim 1 has been canceled without prejudice. Thus, the objection is moot as to claim 1. Claim 37 has been added, and reads "at least one mounting" appropriately in the claim. Applicants request withdrawal of the objection.

Claim 24 stands objected to as allegedly implying two mounting frames as being claimed. The objection is traversed.

Claim 24 has been amended to read "the mounting frame" in line 4. Applicants request withdrawal of the objection.

Objection to Drawings

The drawings are objected to as allegedly failing to show the "base" called for in line 2 of claim 1. The objection is traversed.

Claim 1 has been canceled without prejudice. Thus, the objection is moot insofar as it is asserted that claim 1 refers to a feature not shown in the drawings. Figures 1 and 13 have been amended to identify a base 11. The specification has also been amended to clarify the inclusion of the base 11 in the mirror assembly.

Applicants request withdrawal of the objection, and the acceptance of the drawings.

Rejection Under 35 U.S.C. §102(b)

Claims 1-4 stand rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 6,488,382 to Mertens. The rejection is traversed.

The claimed invention is not anticipated under §102 unless each and every element of the claimed invention is found in the prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986). To anticipate, a single reference must teach each and every limitation of the claimed invention. *Eolas Technologies Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1335; 73 U.S.P.Q.2D (BNA) 1782 (Fed. Cir. 2005). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The rejection fails to satisfy these standards.

Mertens '382 discloses a rear view mirror comprising a carrier 6 having a castellated projection 8 adapted for insertion into a cylindrical receptacle 9 of a mirror support 2. The castellated projection 8 comprises two diametrically opposed, substantially L-shaped stays 15, 17 each having a radially-outwardly projecting locking cam 19, 20. The locking cams 19, 20 are adapted to engage a projecting rim 23 extending circumferentially along the inner wall 26 of the receptacle 9. The castellated projections 8 also comprise a pair of diametrically opposed stays 16, 18, having a shorter length than the stays 15, 17, and which have free ends 24, 25 adapted to engage axial depressions 41, 42 in the inner wall of the receptacle 9. A metal, sleeve-shaped spring 10

is received within the cylindrical space defined by the stays 15-18, to exert a radially-outwardly directed force to the stays 15-18. When the projection 8 is inserted into the receptacle 9, the spring 10 maintains the locking cams 19, 20, and the ends 24, 25 in a radially-outwardly directed configuration to lock the projection 8 in the receptacle 9. The sleeve-shaped spring 10 is inserted into the cylindrical space defined by the stays 15-18 after the projection 8 is inserted into the receptacle 9.

Claim 1 has been canceled. Thus, the rejection is moot as to claim 1. Applicants request withdrawal of the rejection as to claim 1.

Claims 2-4 depend from new claim 37. Claim 37 calls for a vehicular mirror assembly comprising a mounting frame, a mirror shell, a reflective element, a tilt actuator, and at least one connector. The mounting frame is adapted to be coupled to a vehicle. The mirror shell is mounted to the mounting frame and comprises a rearwardly-facing opening. The reflective element is mounted within the mirror shell in register with the rearwardly-facing opening. The tilt actuator is mounted to at least one of the mirror shell and the mounting frame, and the reflective element, for tiltably actuating the reflective element. The at least one connector joins at least one of (1) the mounting frame and the mirror shell, and (2) the tilt actuator and the at least one of the mounting frame and the mirror shell. The connector comprises a columnar snap-fit connection which securely retains the at least one of (1) the mounting frame to the mirror shell, and (2) the tilt actuator to the at least one of the mounting frame and the mirror shell.

Claim 37 is patentable over Mertens '382. The castellated projection 8 of Mertens '382 connects a carrier 6 (analogous to the mounting frame of Applicants' invention) to a mirror support 2 (analogous to the base of Applicants' invention). The castellated projection is not columnar. If anything, it is annular. Furthermore, the castellated projection does not join the carrier to the mirror housing, nor does it join the tilt actuator to either the mounting frame or the mirror shell. Thus, Mertens '382 does

not teach each and every limitation of the invention of claim 37 in as complete detail as is contained in claim 37. Thus, claim 37 is patentable over Mertens '382.

Since claims 2-4 depend from claim 37, they are for the same reasons patentable over Mertens '382. Applicants request withdrawal of the rejection of claims 2-4, and the allowance of claims 2-4 and 37.

Claims 1, 2, and 10 stand rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 6,712,329 to Ishigami. The rejection is traversed.

Ishigami '329 discloses a mirror 10 for a vehicle comprising a rear side visor rim 28A and a front side visor cover 28B, which are interconnectable by a connector comprising pairs of J-shaped nipping claws 38 in the visor rim 28A. The nipping claws 38 are adapted to resiliently engage a corresponding number of planar projecting hooks 48 in the visor cover 28B. The projecting hooks 48 terminate at a free end in a widened portion 50 which is adapted to engage the distal ends of the nipping claws 38. When the hooks 48 are inserted into engagement with the nipping hooks 38, the nipping hooks 38 resiliently deform, and the widened portions 50 retain the projecting hooks 48 into engagement with the nipping claws 38. As a result, the visor cover 28B is held to the visor rim 28A.

Claim 1 has been canceled. Thus, the rejection is moot as to claim 1. Applicants request withdrawal of the rejection as to claim 1.

Claims 2 and 10 depend from a new claim 37. Claim 37 is patentable over Ishigami '329. Claim 37 calls for a columnar snap-fit connection. The nipping claws 38 and projecting hooks 48 do not constitute a columnar connection. Furthermore, the nipping claws and projecting hooks do not join the mounting frame to the mirror shell, or the tilt actuator to the at least one of the mounting frame and the mirror shell. Rather, the nipping claws and projecting hooks join 2 halves of a housing. Thus, Ishigami '329 does

not teach each and every limitation of the invention of claim 37 in as complete detail as is contained in claim 37. Claim 37 is patentable over Ishigami '329.

Since claims 2 and 10 depend from claim 37, they are for the same reasons patentable over Ishigami '329. Applicants request withdrawal of the rejection of claims 2 and 10, and the allowance of claims 2, 10, and 37.

Rejection Under 35 U.S.C. §103(a)

Claims 3, 4, 11-15, 19, 21-28, 32, and 34-36 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ishigami '329. The rejection is traversed.

The Examiner asserts that "it would have been obvious to one of ordinary skill in the art to use an integrally and rigidly attached snap fit mounting stud to mount Ishigami's tilt actuator to the mounting frame. The motivation for doing this would have been to provide lower costs or easier assembly work..."

The standards for a finding of obviousness must be strictly adhered to. Simply citing one or more prior art references that illustrate different facets of the invention and then concluding that it would be obvious to combine the references to create the applicant's invention is wholly inadequate.

A claimed invention is unpatentable if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art....The ultimate determination of whether an invention would have been obvious under 35 U.S.C. §103(a) is a **legal conclusion based on underlying findings of fact.**¹

¹ The underlying factual inquiries include (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; and (3) the differences between the claimed invention and the prior art. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966).

A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field....Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

Most if not all inventions arise from a combination of old elements....Thus, every element of a claimed invention may often be found in the prior art....However, **identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention**....Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, **there must be some motivation, suggestion or teaching of the desirability of making the specific combination** that was made by the applicant....Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved....In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references....The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art....Whether the Patent Office Examiner relies on an express or an implicit showing, **the Examiner must provide particular findings related thereto....Broad conclusory statements standing alone are not "evidence."**

In Re Werner Kotzab, 217 F.3d 1365; 55 U.S.P.Q.2d (BNA) 1313 (Fed. Cir. 2000)(citations omitted)(emphasis added).

The Examiner has failed to identify any legally sufficient motivation, suggestion, or teaching of the desirability of modifying Ishigami '329 to arrive at Applicants'

invention. There has been no statement identified in Ishigami '329, there has been no discussion of the knowledge of one of ordinary skill in the art or the nature of the problem to be solved, there has been no identification of what the teachings of Ishigami '329, the knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to one of ordinary skill in the art as required for a showing of motivation. The Examiner has failed to provide any particular findings related to any motivation, suggestion, or teaching of the desirability of modifying Ishigami '329. Rather, the Examiner has simply relied upon "broad conclusory statements standing alone," which can only lead to the conclusion that the Examiner is simply relying on impermissible hindsight reconstruction of Applicants' invention.

The Examiner asserts, in effect, that a desire for lower costs or easier assembly work would have motivated a person to modify Ishigami '329. However, this rationale is wholly insufficient to support the Examiner's obviousness rejection. This rationale could be asserted as a motivation for virtually any modification to existing prior art, and would, if valid, support any obviousness rejection, thereby preventing virtually any invention from being patented. The patent law does not allow such an expansive interpretation of obviousness.

Moreover, the Examiner must specifically identify what in Ishigami '329 supports the conclusion that using a snapfit mounting stud to mount a tilt actuator in the mirror assembly of Ishigami '329 would have lowered costs or provided easier assembly work. Indeed, it is just as likely that adding mounting studs to the assembly during the fabrication process for purposes of attaching the tilt actuator would add to the cost and fabrication complexity of the Ishigami '329 mirror system. The Examiner's general statement about the desirability of lowered costs or easier assembly work is not sufficient to support the rejection.

Moreover, as discussed above, to claim 37 is patentable over Ishigami '329. Because claim 37 calls for a columnar snap-fit connection that is not disclosed by

Ishigami '329. Furthermore, the nipping claws and projecting hooks of Ishigami '329 do not join the mounting frame to the mirror shell, or the tilt actuator to the at least one of the mounting frame and the mirror shell. The Examiner's asserted modification of Ishigami '329 does not resolve these deficiencies. Thus, the asserted modification of Ishigami '329 would result in a mirror assembly that does not meet the limitations of claim 37. Claims 3 and 4 depend from claim 37 and, for the same reasons, are patentable over Ishigami '329.

Claim 11 calls for a snap-fit assembly for interconnecting selected components of a vehicular mirror assembly, the components comprising a mirror housing, a mounting frame having at least one of a first mounting aperture, and a tilt actuator assembly having at least one of a second mounting aperture. The snap-fit assembly comprises at least one of a first mounting stud comprising a first portion having a first diameter and a second portion having a second diameter smaller than the first diameter. The second portion is adapted for snap fit communication with the at least one of the first mounting aperture. The first portion is adapted for supporting communication with the mounting frame. The at least one of the second mounting stud comprises a first portion having a first diameter and a second portion having a second diameter smaller than the first diameter. The second portion is adapted for snap fit communication with the at least one of the second mounting aperture and the first portion is adapted for supporting communication with the tilt actuator assembly.

Claim 11 is patentable over Ishigami '329. As discussed above, the rejection fails to satisfy the legal standards for a finding of obviousness. Furthermore, claim 11 includes limitations addressed to the diameters of the claimed snapfit assembly, which is appropriate and indicates that the snapfit assembly of claim 11 has a generally columnar or cylindrical configuration. The attachment components of Ishigami '329 do not satisfy these limitations, and the Examiner's asserted modification of Ishigami '329 does not resolve these deficiencies. Thus, the asserted modification of Ishigami '329 would result in a mirror assembly that does not meet the limitations of claim 11. Claims 11-15, 19,

21- 23 depend from claim 11 and, for the same reasons, are patentable over Ishigami '329.

Claim 24 calls for a vehicular mirror assembly comprising a mirror housing, a mounting frame, and a tilt actuator. The mirror housing is adapted to enclose the mounting frame and the tilt actuator assembly, and has at least one of a first mounting stud. The mounting frame is enclosed within the mirror housing and has at least one of a first mounting aperture and at least one of a second mounting stud. The tilt actuator assembly has at least one of a second mounting aperture. The at least one of the first mounting stud comprises a first portion having a first diameter and a second portion having a second diameter smaller than the first diameter. The second portion is adapted for snap fit communication with the at least one of the first mounting aperture, and the first portion is adapted for supporting communication with the mounting frame. The at least one of the second mounting stud comprises a first portion having a first diameter and a second portion having a second diameter smaller than the first diameter. The second portion is adapted for snap fit communication with the at least one of the second mounting aperture, and the first portion is adapted for supporting communication with the tilt actuator assembly.

Claim 24 is patentable over Ishigami '329. As discussed above, the rejection fails to satisfy the legal standards for a finding of obviousness. Furthermore, claim 24 includes limitations addressed to the diameters of the claimed snapfit assembly, which is appropriate and indicates that the snapfit assembly of claim 24 has a generally columnar or cylindrical configuration. The attachment components of Ishigami '329 do not satisfy these limitations, and the Examiner's asserted modification of Ishigami '329 does not resolve these deficiencies. Thus, the asserted modification of Ishigami '329 would result in a mirror assembly that does not meet the limitations of claim 24. Claims 25-28, 32, and 34-36 depend from claim 24 and, for the same reasons, are patentable over Ishigami '329.

For the above reasons, claims 3, 4, 11-15, 19, 21-28, 32, and 34-36 are patentable over Ishigami '329. Applicants request withdrawal of the rejection, and the allowance of claims 3, 4, 11-15, 19, 21-28, 32, and 34-36.

Claims 9, 20, and 33 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ishigami '329 in view of Mertens '382. The rejection is traversed.

The Examiner asserts that "Ishigami lacks a bore extending coaxially through the stud. Mertens teaches a bore extending coaxially through the stud (fig. 4) at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the studs of Ishigami to include the bore hole as taught by Mertens. The motivation for doing this would have been allow [sic] a spring to be inserted in the hole to provide elastic tension in the connection as suggested by Mertens (col. 2, lines 53-54)." This rationale is entirely without merit, and wholly inadequate to support the rejection.

First, Mertens '382 does not teach a bore extending coaxially through a stud. Mertens '382 teaches a large annular projection comprising a plurality of flexible fingers arranged to couple a carrier to a mirror support. The projection is not a stud; it is part of a connection which appears adapted to enable pivoting of the carrier relative to the mirror support about an axis coaxial with the projection.

Second, there is absolutely no rational reason for including bore holes in the studs of Ishigami '329. The fasteners of Ishigami '329 are generally rectilinear, not cylindrical or columnar. Boreholes would serve no function whatsoever in such structures. The idea of including bore holes in the fasteners is ludicrous. Given the fact that the nipping claws provide the resiliency necessary to the operation of the Ishigami '329 fasteners, there is no reason to include boreholes in the projecting hooks. As well, there is no reason to include boreholes in the nipping claws.

Third, there is no reason to insert a spring in the Examiner's asserted borehole. As discussed above, the nipping claws provide the resiliency necessary to the operation

of the Ishigami '329 fasteners. Adding springs to boreholes installed in the Ishigami '329 fasteners would contribute nothing to the performance of the fasteners, would complicate the fabrication of the mirror, and would add cost. At best, this rationale is legally unsupported. At worst, it is an abuse of the inventors' time and resources in pursuing the patenting of their invention. It is overwhelmingly clear that the Examiner is grasping for any rationale, however impractical and ridiculous, to support the rejection. The rejection cannot be sustained.

Claim 9 depends from claim 37. Claim 9 is patentable over Ishigami '329 in view of Mertens '382. As discussed above, claim 37 is patentable over both Ishigami '329 and Mertens '382. The Examiner's asserted combination of Ishigami '329 and Mertens '382 does not disclose a columnar snap-fit connection which securely retains the at least one of the mounting frame to the mirror shell, and the tilt actuator to the at least one of the mounting frame and the mirror shell. Claim 37, and therefore claim 9, are patentable over both Ishigami '329 and Mertens '382.

Claim 20 depends from claim 11. Claim 20 is patentable over Ishigami '329 in view of Mertens '382. As discussed above, claim 11 is patentable over both Ishigami '329 and Mertens '382. The Examiner's asserted combination of Ishigami '329 and Mertens '382 does not disclose a columnar snap-fit connection which securely retains the at least one of the mounting frame to the mirror shell, and the tilt actuator to the at least one of the mounting frame and the mirror shell. Claim 11, and therefore claim 20, are patentable over both Ishigami '329 and Mertens '382.

Claim 33 depends from claim 24. Claim 33 is patentable over Ishigami '329 in view of Mertens '382. As discussed above, claim 24 is patentable over both Ishigami '329 and Mertens '382. The Examiner's asserted combination of Ishigami '329 and Mertens '382 does not disclose a columnar snap-fit connection which securely retains the at least one of the mounting frame to the mirror shell, and the tilt actuator to the at least

one of the mounting frame and the mirror shell. Claim 24, and therefore claim 33, are patentable over both Ishigami '329 and Mertens '382.

For the above reasons, claims 9, 20, and 33 are patentable over Ishigami '329 in view of Mertens '382. Applicants request withdrawal of the rejection, and the allowance of claims 9, 20, and 33.

Claims 5-8, 16-18, and 29-31 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ishigami '329 in view of U.S. Patent No. 5,604,645 to Weaver. The rejection is traversed.

Weaver '645 discloses a mounting bracket 20 for a rear view mirror from which a plurality of snapping fingers 24 extend. The snapping fingers 24 are used to attach a mirror motor 26 to the mounting bracket 20. The snapping fingers 24 comprise a plurality of circumferentially distributed strap-like cantilever arms each terminating in a head portion 40 and a lower face 44 adapted to engage a mating lip 30 of the mirror motor 26. The lower face 44 is radially-inwardly directed. The snapping fingers 24 can flex radially outwardly away from the mating lip 30 to enable the mating lip 30 to move past the head portion 40 until the lower face 44 can engage the mating lip 30. The lower face 44 is inclined at an angle of at least about 10°, most preferably between about 10° and about 20°.

The Examiner asserts that "Weaver teaches wherein the second portion of the mounting stud comprises a neck portion (portion below taper 44) and a bulb end (40), the neck portion having a diameter smaller than the diameter of the bulb end (fig. 4)." The Examiner engages in inappropriately renaming elements of the prior art in an attempt to meet the limitations of the Applicants' claims. This is insufficient to support the rejection.

Weaver '645 does not disclose differing diameters. The snapping members of Weaver '645 are generally trapezoidal. To refer to diameters in the context of Weaver

'645 is disingenuous. It is obvious that the Examiner is attempting to justify the rejection by arbitrarily referring to elements in Weaver '645 using the terminology of the claims, even though the terminology is wholly inapplicable to such elements.

The Examiner also asserts that "Regarding claims 6, 17, and 30, Weaver teaches wherein the bulb end comprises an annular face (42) having an approximately 45° bevel (col. 4 line 15)." The upper face 42 of Weaver '645 is not, and in no way can be construed as, an annular face. The upper face of 42 of Weaver '645 is a planar rectangular surface. "Annular" is defined as "Shaped like or forming a ring." American Heritage Dictionary of the English Language, 4th Ed., Houghton Mifflin Co. (2000). No legitimate argument can be made that the upper face 42 is annular. To assert that the upper face 42 of Weaver '645 is an annular face is disingenuous, arbitrary and capricious, and cannot be sustained.

The Examiner asserts that "Regarding claims 7, 18, and 31, Weaver teaches wherein the neck portion comprises a truncated cone inclined approximately 10° (col. 4 line 19)." The Examiner identifies the "neck portion" in Weaver '645 as the portion below taper 44. However, this portion has a generally trapezoidal shape. It is not, and cannot be construed as, a cone, truncated or otherwise, and no legitimate argument can be made that it is a truncated cone. Again, the Examiner's assertion is disingenuous, arbitrary and capricious, and cannot be sustained.

The Examiner also asserts "At the time of invention, it would have been obvious to one of ordinary skill in the art to modify Ishigami's mounting studs to include the specific angles taught by Weaver. The motivation for doing this would have been to provide an optimal snap fit connection as suggested by Weaver (see col. 2)." However, the Examiner has failed to identify any legally sufficient motivation, suggestion, or teaching of the desirability of combining Ishigami '329 with Weaver '645 to arrive at Applicants' invention. There has been no reasonable statement identified in Ishigami '329 or Weaver '645, there has been no discussion of the knowledge of one of ordinary

skill in the art or the nature of the problem to be solved, there has been no identification of what the teachings of Ishigami '329 and Weaver '645, the knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to one of ordinary skill in the art as required for a showing of motivation. The Examiner has failed to provide any particular findings related to any motivation, suggestion, or teaching of the desirability of combining Ishigami '329 with Weaver '645. Rather, the Examiner has simply relied upon "broad conclusory statements standing alone," which can only lead to the conclusion that the Examiner is simply relying on impermissible hindsight reconstruction of Applicants' invention.

Moreover, presumably the inventors of the Ishigami '329 device would have optimized the angular configuration of the projecting hooks 48 in order to facilitate the insertion and retention of the projecting hooks 48 relative to the nipping claws 38. Therefore, there would have been no motivation to look to Weaver '645 for any other angular configuration. The Examiner's rationale cannot be sustained.

For the above reasons, claims 5-8, 16-18, and 29-31 are patentable over Ishigami '329 in view of Weaver '645. Applicants request withdrawal of the rejection, and the allowance of claims 5-8, 16-18, and 29-31.

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CONCLUSION

If there are any outstanding issues which the Examiner feels may be resolved by way of telephone conference, the Examiner is cordially invited to contact the undersigned to resolve these issues. Early notification of allowability is respectfully requested.

Respectfully submitted,

REX E. BLAKEMAN ET AL.

Dated: February 16, 2007

By: /Michael F Kelly/

G. Thomas Williams, Reg. No. 42,228
Michael F. Kelly, Reg. No. 50,859
MCGARRY BAIR PC
171 Monroe Avenue, NW, Suite 600
Grand Rapids, Michigan 49503
616-742-3500

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